`IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2886 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAJPUT PARBAT LADHA

Versus

RAJPUT ARJAN VARJANG & OTHERS

Appearance:

MR JV DESAI for Petitioner

MR A.G.URAIZEE,GOVERNMENT PLEADER for Respondent no. 7 .

MR MC BAROT for Respondents Nos.l to 6.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 07/03/96

ORAL JUDGEMENT

The petitioner has questioned the legality and validity of the judgment and order recorded by Deputy Secretary,Revenue Department (Appeals),Gujarat State, Ahmedabad, rendered on 17/3/1992 confirming the judgment

and order passed by the Mamlatdar ,Vav in Jagir case no.1/91 recorded on 1.7.1991 , by invoking the aids of Articles 226 and 227 of the Constitution of India.

The matrix of relevant facts giving rise to this petition may be narrated at the first juncture. The petitioner claims to be the owner of two agricultural fields bearing survey numbers 224 and 669 situated in the sim of village Radosan in Vav taluka which are hereafter referred to as the disputed fields. The petitioner had mortgaged the disputed fields with deceased Varjang Haja,the predecessor in title of the respondents Nos.l to 6. The petitioner filed Regular civil suit No. 23 /85 in the court of Civil Judge (J.D.) at Vav-Tharad for redemption of the said disputed fields on the basis of the said mortgage transaction.

During the pendency of the said suit filed by the petitioner against respondents Nos.1 to 6,a dispute was raised about Gharkhed land in the written statement. Thus,the defendants inter alia contended in the written statement filed in the suit that the disputed fields are Gharkhed - land and therefore, the petitioner is not entitled to redemption. The issue was raised by the trial court with regard to this dispute as issue No.3A which was referred to the Mamlatdar concerned for adjudication by way of reference of the court as required under the provisions of the Bombay Merged Territories and Areas (Jagir Aboliltion) Act,1953 (' the Act' for short).

The Reference received from the court was treated as Jagir Case No. 1/91 by the Mamlatdar at Vav under the provisions of the said Act and an inquiry was conducted under Section 2(4)(ii) of the said Act. The contention of the respondents in the said Jagir case was that the disputed fields are Gharkhed land since the time of their forefathers. The contention of the petitioner has been that he is the owner of the disputed fields and entitled to redemption and restoration as there was no question of Gharkhed -land. In other words,the petitioner's contention has been that the disputed fields are not Gharkhed land but are of his absolute ownership. The Mamlatdar held against the petitioner. Therefore, Appeal No. 11/91 was filed before respondent No.7-State of Gujarat which also came to be dismissed confirming the order of ther Mamlatdar. hence,this petition.

The provisions of Section 2(4)(ii) of the Act read as under :

xxxx xxxxx xxxxx xxxxx xxxxx xxxxxx

"2.(4) If any question arises,

(ii) whether any land is Gharkhed or Jiwai,..
the State Government shall decide the question and such decision shall be final:

Provided that the State Government may authorise any officer to decide question arising under any of the sub -clauses (i),(ii) and (iii) and subject to an appeal to the State Government, his decision shall be final".

Learned counsel appearing for the petitioner vehemently contended that the impugned orders are vitiated for non-observance of principles of natural justice, in that, it has ben contended that in course of proceedings before the Mamlatdar, on 26.6.1991, the matter was part heard and was adjourned to the next day,i.e. on 3.7.1991 and in the meantime, advocate of the petitioner died on 29.6.1991. Despite this, the Mamlatdar at Vav passed the impugned order on 1.7.1991 advancing the date which was originally fixed on 3.7.1991. It is,therefore,contended that proceedings were incomplete,improper and illegal and the petitioner was not given sufficient opportunity of hearing. This submission appears to be full of substance and sustainable in light of the facts of the present case.

Firstly,the averments in the petition and the aforesaid submissions have not been controverted. Therefore,this petition is required to be allowed only on this uncontroverterd version as the same is resulting into miscarriage of justice on the ground of non-observance of principles of natural justice. It is a settled proposition of law that any person who is likely to be adversely affected or visited with evil or civil consequences must be afforded an opportunity of hearing. This is cardinal principle of jurisprudence. No man can be condemned unheard. Surprisingly, the Mamlatdart concerned had declared the impugned order on 1.7.1991 though next date was given as 3.7.1991 and despite the fact that advocate of the petitioner had died on 29.6.1991. The evidence part was also not complete. What prompted the Mamlatdar to advance the date of decision is not made out from the record. It was a great fallacy on his part to advance the date of decision and that too in an incomplete part heard proceedings under the Act.

The issue of Gharkhed land in respect of the disputed fields raised by the respondents was referred by the civil court to the Mamlatdar under the provisions of

Section 2(4)(ii) of the Act. It is very clear from the aforesaid provisions that Mamlatdar is competent to decide whether or not any land is Gharkhed or Jivai land under the Act. The main design of the said Act was to abolish Jagirs in the merged territories and merged areas in the State of Bombay and to provide for consequential and incidental matters. Under Section 2(v).'Gharkhed land' means land held by a jagirdar as his personal or private property and cultivated personally by him. 'Jagirdar' means the holder of a jagir village and includes his co-sharer. The question of deciding the nature of land or in other words,when a dispute is raised about jagir,jivai or Gharkhed land, it is to be referred to the competent authority for decision in accordance with law under the Act.

The civil court had made a reference to the Mamlatdar concerned for decision on the issue of Gharkhed land with regard to the disputed fields raised by the respondents in their written statement in a suit filed by the petitioner. Therefore,it was incumbent upon the Mamlatdar to decide the issue of Gharkhed land in accordance with law under the provisions of Section 2(4)(ii) of the Act. However, unfortunately, in the course of proceedings before him,the Mamlatdar did not observe the principles of natural justice. In the course of proceedings, in Jagir case No.1/91,the Mamlatdar adjourned the part heard matter for further hearing to 3.7.1991. Before that,the last date was 26.6.1991. The advocate of the petitioner died in the interregnum,like that,on 29.6.1991. The Mamlatdar,for the reasons best known to him, passed the order on 1.7.1991 declaring the respondents as Gharkhed- land holders by advancing the pre-decision date. Though the next date for hearing was fixed on 3.7.1991, the Mamlatdar declared the judgment by advancing date to 1.7.1991. The course adopted by the Mamlatdar concerned is not only violative of principles of natural justice but is also highly shocking and surprising. There is purpose and policy behind the doctrine of audi alteram partem . It is a settled proposition of law that no adverse decision or any evil or civil consequences can be imposed or awarded without giving sufficient opportunity of hearing being given to the party affected or concerned . The impugned order of the Mamlatdar is suffering from the vice of non-observance of the principles of natural justice and is also manifestly perverse.

Though the petitioner carried the adverse decision recorded by the Mamlatdar in appeal before respondent No.7,he did not succeed there.

After having examined the judgment of the appellate authority, this court has no hesitation in finding that it is entirely perverse and unjust. Though a specific plea was raised before the appellate court about death of the lawyer of the petitioner and resultant harm and injury to the petitioner, , it is not dealt with and decided for the reasons best known to the appellate authority. In short, an attempt to get the illegal and unjust order of the Mamlatdar reversed before the appellate authority resulted into smoke. Therefore,this petition under Articles 226 and 227 of the Constitution .

After having examined the facts and circumstances and the relevant proposition of law on the point, this court has no hesitation in finding that the iumpugned order of the Mamlatdar recorded on 1.7.1991 and confirmed in appeal by respondent No.7 on 17.3.1992 is perverse,illegal and unjust requiring interference of this court, and they are required to be quashed and set aside. Both the impugned orders are quashed and set aside.

In the result, this petition is allowed quashing both the impugned orders and remanding the matter back to the Mamlatdar concerned for fresh hearing from the stage it was left on 26.6.1991,with a direction that the parties will be afforded an opportunity of hearing and tendering evidence and the matter will be disposed of as early as possible in view of long pending dispute between the parties. It is hoped that the Mamlatdar concerned will accord priority and expedition to this trial and will try to dispose it of in accordance with law,as far as possible not later than 29th July 1996. Rule is made absolute to the aforesaid extent with costs.
